

1 infrastructure industries?" Many of them have spent a great
2 deal of time studying the U.S. system and a basic question
3 they ask is, "Should we do what you do?" I think the
4 general advice that American advisors give is, "No, you
5 should not do it the way we do it."

6 One feature that amuses them is the fact that we
7 have, both in our sectoral regulators and in our anti-trust
8 agencies, in effect, overlapping review of mergers on
9 competition policy issues. Between the Department of
10 Justice and the FCC, for example, we have two federal
11 institutions, which I would suggest end up looking at many
12 of the same issues, though perhaps with a different legal
13 standard but the substantive focus of the analysis in many
14 instances is the same.

15 What are the consequences of having two federal
16 institutions review the same competition policy issues? Let
17 me mention three basic concerns. The first is that having a
18 multiplicity of federal competition policy agents
19 complicates the efforts of any single agent to develop
20 consistent enforcement policies. Inconsistent enforcement
21 policies increase the cost of executing transactions and
22 limit the clarity of federal policy.

23 A second basic concern is that it weakens
24 accountability. By having two institutions responsible for
25 carrying out a specific task neither might feel the urgency

1 to get the issues right the first time, out of concern or
2 perhaps comforted by the possibility that someone else will
3 back stop them.

4 The third concern deals with the international
5 arena. Having a multiplicity of competition policy agents
6 limits the ability of the country to establish consistent
7 procedural rules and substantive requirements which, in
8 turn, increases the difficulty of devising widely accepted
9 international principles. As you are quite well aware, many
10 of the transactions you review have international
11 consequences.

12 What are some policy options for dealing with this
13 concern? Well, the least desirable outcome, I would
14 suggest, is the status quo where we have parallel or
15 sequential review of the same issues by a sectoral regulator
16 and an anti-trust regulator.

17 What options might we consider as alternatives?
18 The first would be that the anti-trust agency makes the
19 basic competition policy decision with advise from the
20 sectoral regulator. An alternative is that the sectoral
21 regulator, the FCC, makes the basic competition policy
22 decision, with advise from the anti-trust agency. In
23 neither instance would we have parallel overlapping review
24 of the same issues.

25 If we don't go that far what interim solution

1 might we adopt if we leave the basic allocation of authority
2 in place? Where the sectoral regulator imposes competition
3 policy remedies beyond those ordered by the anti-trust
4 agencies I would suggest that the identity and purpose of
5 these additional controls be clearly specified to make the
6 process as transparent as possible. Thank you.

7 Agenda Item: Questions and Answers.

8 CHAIRMAN KENNARD: Thank you, Professor. We will
9 now go to a brief question and answer period. I will begin
10 with a question for Mr. Carey.

11 Mr. Carey, I was very interested in your
12 experience in the state of New York in the wake of the Bell
13 Atlantic/NYNEX merger. You seem to be saying that the
14 conditions that this Commission imposed on that merger to
15 open the market for competition seemed to be working. I'm
16 curious if you can suggest to us or give us a little bit
17 more detail as to why you think they have worked, areas
18 where they might be improved and your assessment as to the
19 state of competition in New York State.

20 MR. CAREY: Mr. Chairman, as I stated in my
21 testimony, one thing that concerns us is that as far as the
22 implementation of the OSS in a timely fashion, your time
23 table has not been met. It is important to us in New York
24 State to take a look at what the goals are for the public
25 policy. Of those goals one of the things we have tried to

1 work at, we have partnered with the Public Service
2 Commission and Governor Pataki is in completing the process
3 on the 271 proceeding so that we can open up those markets
4 to the local carriers.

5 The problems that we have had are continually the
6 inability of the incumbent LEC to provide the types of
7 services necessary for the competitors to achieve the kind
8 of success that they want in marketing their products and
9 completing their sales orders. This is the kind of activity
10 that we believe that you can bring to the table from the
11 federal level. At the local level we have been very very
12 effective in working with the company and the company has
13 been very effective in meeting the goals that we have
14 established in order to improve service quality and
15 infrastructure.

16 The Rev. Jackson made some comments about
17 infrastructure and service and quality in underserved areas.
18 Part of our position in achieving the \$1 billion investment
19 in infrastructure was to improve infrastructure that the
20 previous company, NYNEX, had allowed to deteriorate in
21 places like Harlem and Yonkers. On top of that we also
22 created a diffusion fund.

23 The diffusion fund allows us to use \$50 million
24 over 5 years to target areas such as New Rochelle and
25 Buffalo, Yonkers, areas in Brooklyn and the South Bronx

1 where we can develop internet rings so that we can bring the
2 new technology, the combined bundled technology of not only
3 telephonics but data process and television to areas that
4 have been underserved. So, these are the kinds of things
5 that we have done in New York State.

6 The bottom line is that the company has actually
7 done it. They have hired the workers. They have put in the
8 infrastructure. They have done what they said they would do
9 because the PSC in New York State has held their feet to the
10 fire and that's what we are asking you to do at your level
11 of government.

12 CHAIRMAN KENNARD: Thank you, Mr. Carey. Other
13 questions from the bench? Commissioner Furchtgott-Roth.

14 COMMISSIONER FURCHTGOTT-ROTH: Prof. Kovacic, you
15 described a parallel or sequential process for the review of
16 mergers. The FCC actually has two distinct bases to review
17 mergers, one is a public interest standard, which is
18 actually not for the review of mergers but merely for the
19 transfer of licenses under Section 310 of the Communications
20 Act or for the transfer of permits under Section 214. We
21 have separate and distinct authority for Clayton Act review
22 of telecommunications carrier mergers. Yet, we have not
23 exercised that.

24 We have heard today about many issues, both from
25 Prof. Krattenmaker and from our distinguished panel, of

1 issues that the Commission ought to consider in reviewing
2 this merger.

3 My question to you is could many, if not all, of
4 these issues be considered under a Clayton Act review as
5 opposed to the public interest review of Section 310?

6 PROF. KOVACIC: I think most of the competition
7 policy issues do fit within a Clayton Act framework. They
8 do involve extremely idiosyncratic industry circumstances
9 that might very well benefit from the advice and guidance of
10 the Commission but what I would contemplate in that instance
11 is that the Department of Justice performs that kind of
12 analysis with the advice, with the recommendations of the
13 Commission.

14 If you are not comfortable with the Department of
15 Justice then I would be perfectly comfortable putting that
16 function in the FCC with the advice and guidance of the
17 Department of Justice. I simply wouldn't have two windows
18 to which the parties have to go in many respects to get the
19 same review of the same issues where the issues could easily
20 be addressed under one window or the other.

21 COMMISSIONER TRISTANI: If I could follow up on
22 that. Are you saying that DOJ looks at service quality
23 issues?

24 PROF. KOVACIC: They look at the competition
25 policy issues that in many instances affect service.

1 COMMISSIONER TRISTANI: But do they look at
2 service quality?

3 PROF. KOVACIC: In what sense?

4 COMMISSIONER TRISTANI: A company's service
5 quality record.

6 PROF. KOVACIC: It would certainly be important in
7 their evaluation of the efficacy of remedial controls. That
8 is, if you have firms that are saying, "Let the deal go
9 ahead because we are willing to make performance
10 commitments." The past performance and reputation of the
11 firm would be quite important. To the extent that you sense
12 that service quality was not encompassed in the review that
13 the Department of Justice would do, I would be quite
14 comfortable having that be a discreet and separate focal
15 point of Commission attention because the Commission's
16 jurisdiction is certainly broader. My concern would be that
17 the same policy issues not receive sequential review by two
18 different agencies.

19 CHAIRMAN KENNARD: Well Prof. Kovacic, if I could
20 just follow up on that. Yes, would you like to address
21 that, Reverend?

22 REV. JACKSON: Yes, in some sense that the
23 Department of Justice is a broad stroke on the nature of
24 relationships, not on content and service. That is what
25 makes this agency different than the Department of Justice,

1 is that particulars of quality of service and relationships
2 is here. With all of the arrangements, you can have
3 competition behind the walls, you can have good rates behind
4 the walls, you can have oversight behind the walls, you can
5 have good and secure jobs behind the walls, you can have
6 limited entrepreneurship behind the walls but the walls must
7 come down and bridges built for those locked out to be part
8 of the American dream.

9 When you have these walls you lock out market and
10 money and talent, opportunity, justice, and citizenship
11 protection. So, I want to make sure that in all of our
12 deliberations that we see this in big tent terms, not just
13 traditional terms. The Department of Justice will not
14 suffice on the content and character of these relationships.

15 CHAIRMAN KENNARD: Thank you. I also wanted to
16 follow up on your point, Professor, because we heard from
17 Ms. Costa about her experience in California. She mentioned
18 four areas where there has been a diminution in service
19 since these mergers went through. She talked about rate
20 increases, she talked about decrease in service quality, she
21 talked about misleading marketing practices. In my
22 experience as a lawyer and having studied these issues for
23 many years, these are not the issues that the Department of
24 Justice typically has ongoing oversight to ensure that
25 consumers are protected and that is why I am a little bit

1 concerned when you suggest that the Department of Justice
2 alone could take care of all of those issues under its
3 jurisdiction.

4 PROF. KOVACIC: Let me suggest first that I'm not
5 convinced that all of these would fall under the umbrella of
6 its review under the Clayton Act, although I do want to
7 suggest that a number of these issues would. Notice that a
8 fundamental issue in the transactions you have before you
9 and that you have already reviewed involve promises about
10 efficiencies, commitments about the improvements in services
11 that will result from competition and from the transaction.

12

13 To the extent that past performance provides a
14 guide to evaluating the credibility of commitments about
15 remedies in a Clayton Act proceeding that is enormously
16 important evidence for the Department of Justice. In short,
17 we are more interested in what you have done before than in
18 what you say you are going to do. So, I think the past
19 behavior is a very important lens through which the
20 Department of Justice would evaluate efficiency arguments.

21 But, let's assume that there is not a perfect
22 overlap, and I don't suggest that there is, I am proposing
23 that where the Commission does examine other issues that it
24 feels falls outside of the Department of Justice purview
25 that the Commission's review not be an opportunity simply to

1 re-examine issues that the Department of Justice has
2 reviewed.

3 My reading of the Bell Atlantic/NYNEX decision by
4 the Commission suggests that, yes, the Commission was
5 looking at some different things but I find it hard to
6 believe after reading the opinion that the Commission did
7 not review the same concerns about potential competition as
8 the Department of Justice yet reached fundamentally
9 different conclusions. In that instance I see two agencies
10 looking significantly overlapping issues but coming to
11 different conclusions.

12 CHAIRMAN KENNARD: Commissioner Ness.

13 COMMISSIONER NESS: Thank you. If I can follow up
14 on this issue also. Professor, did Congress address the
15 jurisdictional question in the 1996 Telecom Act?

16 PROF. KOVACIC: In fact, no, in fact I --

17 COMMISSIONER NESS: In fact, it did. In fact, it
18 did. Go ahead, please.

19 PROF. KOVACIC: Well, give me your sense of how it
20 did resolve this issue.

21 COMMISSIONER NESS: We had originally Clayton Act
22 jurisdiction which could have, if we had exercised it as
23 such, precluded the Department of Justice from evaluating
24 the merger. The Congress in the 1996 Telecom Act changed
25 that provision and eliminated the exclusivity on the part of

1 the Commission, thus, one could conclude that Congress, in
2 fact, looked at this issue.

3 PROF. KOVACIC: Well, I don't dispute that. I
4 suspect -- how would we take my policy recommendation into
5 account in dealing with that overlap? One approach is for
6 the Commission to say, "The Department of Justice has
7 examined the anti-trust issues, the competition policy
8 issues and we are satisfied with the results that they have
9 reached." That is the extent of our competition policy
10 review, to accept that as being the definitive review of
11 those issues and then perhaps to define the additional areas
12 and the bases on which the Commission would address those
13 additional areas.

14 To the extent that you perceive the 1996 statute
15 to mandate parallel review then I suspect that the
16 implication of what I'm saying is that it is time to go back
17 up the street and to ask them to address whether or not in
18 fact we want as a matter of practice to have parallel
19 overlapping review of these issues.

20 COMMISSIONER NESS: As a practical matter in the
21 Bell Atlantic/NYNEX decision the Department of Justice
22 believed that it could not, in its very limited review of
23 whether or not there is a diminution of competition, it
24 could not give the weight that we could give to the issue of
25 whether or not there was precluded competition. It has a

1 very different standard. It has to present a case to a jury
2 that has to prove beyond a reasonable doubt that there is a
3 violation of the Clayton Act. We have very different
4 authority, we have very different ability to look at some of
5 these issues and the two are not necessarily preclusive of
6 one another.

7 PROF. KOVACIC: Well, actually, the Department of
8 Justice doesn't try the merger cases to juries and it is not
9 a "beyond a reasonable doubt" standard, it is simply
10 substantial evidence. It is a preponderance of the evidence
11 standard. I think the Justice Department's hesitation on
12 the potential competition theories reflects the facts that
13 the federal courts, in examining these issues in great
14 detail, have been doubtful about the strength of the
15 underlying policy foundations for that view. So, the
16 inference I might draw from that is whether or not the
17 potential competition doctrine, as such, is a suitable
18 vehicle for making policy choices.

19 I'm willing to fall back, though, on the position
20 again that if we want a broader charter for examining the
21 competition policy issues perhaps it is time for the
22 Department of Justice to come here and say, "We will advise
23 you on what the issues are but we will not exercise our own
24 independent review which has constraining influence
25 regardless of what the Commission does."

1 CHAIRMAN KENNARD: Well, Professor, let's just
2 come back to the real world for just a second and let's
3 focus on what really happened in the Bell Atlantic/NYNEX
4 transaction. As you recall, the Justice Department
5 extensively looked at this transaction, as Commissioner Ness
6 pointed out, and determined that they would not impose the
7 market opening conditions that this agency decided to impose
8 in its review. We just heard testimony from Mr. Carey that
9 it was those very conditions that are serving to benefit
10 consumers in the state of New York. So, I submit to you,
11 sir, that if we had undertaken your proposal, consumers in
12 New York would be worse off today than they are.

13 Commissioner Tristani.

14 COMMISSIONER TRISTANI: I'd like to follow up with
15 Ms. Costa because you have brought up some real concerns
16 about service quality and prices going up. I have a couple
17 of comments and questions.

18 First, I'm looking at the emergency interrupt
19 proposed price. I guess it is at a dollar right now and the
20 proposal is \$4. Do you know what other companies like
21 Ameritech are currently charging for emergency interrupt, or
22 does anybody know?

23 MS. COSTA: I personally don't know what rate
24 Ameritech is currently charging. What I do know is that we
25 hired expert consultants with a great deal of experience

1 with SBC and Pacific Bell cost studies, and they have said
2 that those prices -- there is no way they are remotely close
3 to cost, they don't need those increases.

4 COMMISSIONER TRISTANI: And is that the same for
5 the busy line verification which would go up from 50 cents
6 to \$2, another 400 percent increase?

7 MS. COSTA: Yes, the analysis was the same for
8 directory assistance, busy line verification, and emergency
9 interrupt.

10 COMMISSIONER TRISTANI: I'm going to ask a pretty
11 pointed question here. You have made some very serious
12 allegations of service quality, as I understood it, going
13 down ever since PacTel merged with SBC.

14 MS. COSTA: Yes.

15 COMMISSIONER TRISTANI: Prices going up, ISDN --
16 which at one time was kind of the -- PacTel was the showcase
17 for, as I recall -- service going down. What would you
18 suggest we do with the information you give us? I mean,
19 should we say we should stop this merger because maybe
20 that's what's going to happen in Ameritech? Should you say
21 we should condition this merger?

22 MS. COSTA: I would say you should stop it. I
23 mean, we are one of the parties that was a signatory to the
24 filing that Ms. Hogerty referred to because we are very
25 concerned about this. We have our own selfish concerns, we

1 are concerned about now a multi-state company, we are
2 concerned about sufficient regulatory oversight but we are
3 also concerned about the effects of this company's
4 performance on our customers and we really don't want
5 anybody else to have to go through the same thing. What we
6 have seen since SBC took over this company is wave after
7 wave of proposals that are designed to get more money out of
8 Californians. We are very disturbed that they didn't comply
9 with the ISDN order. We wish the Commission kept better
10 service quality data but it is undisputable that the volume
11 of complaints increased and a Commission representative
12 recently made that statement at a forum sponsored by Rand
13 and the Annenberg School of Communications.

14 The reason I typed this up, I did 11 single spaced
15 pages and I quoted extensively from a Commission decision, I
16 cited to Pacific's application and I cited to advice
17 letters, is because this is very serious. We have a good
18 reputation as consumer advocates, we are members of NASUCA,
19 we are not blowing smoke here. People have suffered since
20 this company took over.

21 COMMISSIONER POWELL: May I?

22 CHAIRMAN KENNARD: Yes, please, Commissioner.

23 COMMISSIONER POWELL: Seems we are having a heated
24 debate about institutional competence. It seems to me one
25 question I would ask or at least occurs to me, Ms. Costa,

1 and it is really to everyone, but these companies are
2 heavily regulated by state commissions as well. The data
3 you are referring to is kept largely by state commissions.
4 Prices can't be unilaterally raised at the local level by
5 most of these companies without the acquiescence of state
6 utility commissions. I am particularly troubled because Ms.
7 Butler seems to suggest, which I think is probably right,
8 that even a single company can have a variation in its
9 quality of service record from state-to-state and its
10 different regions.

11 So, rather than fighting over the Department of
12 Justice my question would be, "Why wouldn't those concerns
13 most acutely be addressed by state utility commissions
14 rather than in a grand federal way?"

15 MS. COSTA: I think it would be a mistake to
16 ignore those issues because you are the Federal
17 Communications Commission and you make broad policy and your
18 rulings are important and they have an impact at the state
19 level. It is an important message to states that these
20 issues are taken seriously. We know that the FCC has
21 increased its efforts to monitor complaints and to pay
22 attention to these issues. We think they should be taken
23 seriously and considered by all regulators when they are
24 looking at these mergers.

25 COMMISSIONER POWELL: I think that is fair. I am

1 certainly not suggesting ignoring it but there is sort of a
2 question about -- and I think part of the concern that I'm
3 raising is raised by Commissioner Tristani, which is there
4 is something predictive and speculative about what the
5 future conduct of quality service changes will be,
6 particularly the number of states involved in SBC/Ameritech,
7 for example, there is a significant number and it seems to
8 me at least a difficult judgement to make about what will be
9 the uniform affect on service quality in each and every one
10 of those states, depending on different variables.

11 First of all, I am not even entertaining the
12 notion that these aren't legitimate and worrisome concerns
13 on the part of regulators. I'm just asking whether -- and
14 maybe Ms. Butler would want to comment about your confidence
15 that the Federal Communications Commission is able and
16 resourced and focused to address this rather than state
17 commissions.

18 MS. COSTAS: First of all, state commissions have
19 different levels of resources. California is a big state,
20 at least as big as New York, I think. But, we have so many
21 proceedings going on with telecommunication that our
22 commission is not able to adequately monitor.

23 COMMISSIONER POWELL: We have a similar problem.

24 MS. COSTAS: And if California can't do it it is
25 questionable as to whether other states can. Second, the

1 only way you learn about what is likely to happen is to look
2 at what happened in the past. In our case we were asked to
3 comment on the performance of SBC in California and we've
4 done that. Other states who have had experience with SBC,
5 like Missouri, like Texas, share our views. They have had
6 serious problems.

7 So, I think that there is no easy answer. There
8 is not a neat little diagram that will show you how the
9 jurisdiction or the consideration of these issues should
10 take place. But as a rate pair advocate and somebody who
11 has worked in this stuff for about 14 years I would say
12 nobody has the resources to do all of it and so we better be
13 asking everyone, everyone should be asking these questions.

14 REV. JACKSON: Mr. Powell, consistent with the
15 American dream of one big tent, where we include the all and
16 leave none behind, with some assurances of equal protection
17 under the law, equal access and fair share we at states'
18 rights regulatory commissions on voting before 1965 and they
19 varied according to the politics of that state. We finally
20 had to have a federal oversight on a right so basic as
21 voting. Voting is right basic, but no more basic than
22 access to the lines, access to communications. And, so, the
23 standards that states must honor must be determined and
24 enforced by you .

25 What these companies do, they manipulate, they

1 maneuver state-to-state, they play state off against state.
2 There must be some place to say, "Here are the standards."
3 The reason why Alabama and Mississippi must comply today
4 with New York and California is because there are national
5 standards, there is an even playing field and there are
6 consequences for violating those standards. I appeal to you
7 to be the source of uniformity where California or in L.A.
8 or in Paducah, Kentucky that there is the same basic
9 protection assured.

10 CHAIRMAN KENNARD: Commissioner Butler, did you
11 want to address that question?

12 COMMISSIONER BUTLER: Thank you, Mr. Chairman.
13 Commissioner Powell, I would give three reasons for why the
14 FCC should continue to be interested in these issues, even
15 though I do believe the states do have a very significant
16 interest and concern about them. First of all is what I
17 mentioned in my opening remarks, that we each have different
18 levels of authority, as well as different levels of
19 resources and there are states that will be affected heavily
20 by the proposed mergers that have no authority to review
21 them.

22 I think the FCC has got to step up to the plate
23 and make sure that the rate payers and customers,
24 particularly residential and small business customers in
25 those states are not left behind.

1 Second, as we increase the size and the complexity
2 of telecommunications companies and all other companies it
3 becomes increasingly hard for one individual state to track
4 dollar flows, to track investments. If we don't have good
5 cooperation and a good working relationship with, and shared
6 jurisdiction and authority between the states and the
7 Federal Government then we really lose the ability to make
8 sure that we can enforce the conditions that we place on
9 these mergers, if that is the road that we go down.

10 The third is the FCC does have a national
11 perspective. You have been through this before. You have
12 the ability to take the lessons learned, for example, in the
13 Bell Atlantic/NYNEX merger, and make sure we don't make the
14 same mistakes, make sure we take the good parts from those
15 mergers and apply them in future mergers. I think that is
16 really why the states rely on you to have a hand in these
17 issues that at first blush may be state issues.

18 CHAIRMAN KENNARD: Commissioner, thank you. I
19 think that will have to be the last word because we are
20 running over. I want to thank the panelists for this first
21 session. Yes, Reverend? Very quickly, please.

22 REV. JACKSON: May I beg this of you, I'm very
23 concerned about ending the apartheid system in
24 communications and that the FCC makes some fundamental
25 adjustments in the errors of its historical ways to comply

1 with the laws of '64-'65 to include the excluded. You can
2 have a North/South discussion about quality and workers and
3 consumers and rates that still leave a significant body of
4 people excluded from participation.

5 Removing the East/West barrier for inclusion is
6 very fundamental. After all, when our government came up
7 the science of radio it gave away all of the licenses to
8 white males exclusively, blessed by your antecedent. Before
9 the TV, all licenses issued on that same basis, blessed by
10 FCC. In a sense cable television, more or less, blessed by
11 the same deal. Digital, blessed by the same deal. Then
12 they remove for a moment in time the tax certificate. Now
13 here we are again. My appeal is that a condition while
14 these big companies speak of efficiency, service, and
15 competition for size. The mergers must meet standards of
16 inclusion and opportunity to be American, to be legal and to
17 be fair. I appeal to you, just like with your counterpart,
18 the Department of Justice, to make inclusion and opportunity
19 that all America might be included --

20 (Technical difficulty.)

21 -- legal standard for passing these new
22 arrangements. Thank you.

23 CHAIRMAN KENNARD: Thank you. Thank you very much
24 for being here. We will reconvene with our next panel at
25 11:15. Thank you.

1 (Whereupon a brief recess was taken.)

2 Agenda Item: SBC/Ameritech Panel

3 CHAIRMAN KENNARD: The second panel this morning
4 will focus in now on the proposed merger of SBC and
5 Ameritech. I want to extend a welcome to our second group
6 of panelists and our thanks to you for being here.

7 Again, each panelist will have three minutes to
8 present an opening statement. The statement will then be
9 followed by questioning from the bench. We will hear from
10 everyone and then we will have some questioning from the
11 bench, then we will go to our third panel, which will focus
12 in on the proposed merger between Bell Atlantic and GTE.

13 We will begin now with Mr. Taylor.

14 Agenda Item: Robert Taylor, President and CEO,
15 Focal Communications Corporation

16 MR. TAYLOR: Good morning, Chairman Kennard and
17 Commissioners. I appreciate the opportunity to speak here
18 today concerning the proposed merger of SBC and Ameritech,
19 in particular, and the issues of mergers among incumbent
20 telecommunications providers in general.

21 As we approach the third anniversary of the Act,
22 the Commission and various interested parties have gained
23 important real world information that can and should assist
24 in the evaluation of proposed mergers such as Ameritech's
25 and SBC's.

1 Earlier mergers, such as those among SBC and PAC
2 Bell and NYNEX and Bell Atlantic were necessarily approved
3 without much experience about the competitive consequences
4 of these combinations. The advocates of these mergers
5 claimed each would enhance the ability and motivation of the
6 merged entity to compete out of region when compared to the
7 incentives and resources of the individual entities.

8 Now with the experiences that have been gained
9 since the NYNEX/Bell Atlantic and SBC/PacBell mergers we can
10 evaluate the claim that bigger incumbents means more out-of-
11 region competition against reality. And the harsh reality
12 is that neither of these merged mega-corporations, among the
13 largest in the world, are currently engaged in any sort of
14 meaningful land line competition outside of their region.

15 Given that the addition of PacBell apparently had
16 no appreciable effect on SBC's ability or desire to compete
17 out of region there is no rational basis for concluding that
18 adding Ameritech to its assets portfolio will alter the
19 situation one bit.

20 Although SBC's recent statements to the press were
21 intended to counteract this real world evidence they
22 actually confirm it. According to SBC it requires capital
23 in excess of \$3 billion, over 8,000 employees, and in-region
24 long distance in order to compete out of region. Such
25 claims are clearly unlinked to reality.

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1 MFS Communications successfully raised a similar
2 amount of capital and created a global competitive network
3 greater than the one anticipated by SBC without SBC's AAA
4 credit rating, it's huge imbedded customer base and its
5 employee base. Focal Communications itself provides a more
6 recent example that competitive entry is not limited to the
7 form envisioned by SBC. Focal will be serving over 20 major
8 metropolitan areas by the end of 1999, using less than \$200
9 million in invested capital. Even though we started last
10 year and have none of the advantages enjoyed by SBC and
11 currently employ less than 300 people. As far as in-region
12 long distance authority, Focal does not need to provide long
13 distance.

14 In short, the absence of any out-of-region
15 competition from the ILECs that have already merged,
16 combined with the ability of CLECs to enter the markets
17 demonstrates that SBC's promises are entirely pointless as a
18 policy matter and should play no role in the Commission's
19 evaluation of this proposal.

20 What should be factored into the Commission's
21 analysis is the fact that an attempted creation of Bell
22 System East and Bell System West is clearly anti-competitive
23 and bad public policy.

24 My goal this morning is to simply direct your
25 attention to three undisputed facts that require the merger

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1 to be rejected. The absence of any need for a merger in
2 order for either RBAC to participate in out of region
3 competition, the existence of actual potential cross-border
4 competition between adjacent ILECs and the need to benchmark
5 behavior among incumbents.

6 So long as mega-ILECs have the potential
7 opportunity to meld into one big nationwide incumbent and
8 therefore permanently avoid any risk of competition among
9 themselves why would they ever start competing out-of-region
10 and thereby preclude themselves from ultimately merging with
11 incumbents in those out of region markets? With all due
12 respect, the Commission should just say no to the
13 SBC/Ameritech merger.

14 CHAIRMAN KENNARD: Thank you, Mr. Taylor. Mr.
15 Devlin.

16 Agenda Item: J. Richard Devlin, Executive Vice
17 President, General Counsel and External Affairs - Sprint
18 Corporation.

19 MR. DEVLIN: Thank you very much, Mr. Chairman and
20 Commissioners. My name is Richard Devlin. I'm Executive
21 Vice President and General Counsel for Sprint Corporation.
22 We very much appreciate the opportunity today to present our
23 views on the pending SBC/Ameritech merger.

24 This merger would create a massive telephone
25 company that controls about a third of the nation's

1 telephone lines. I'm not saying that big is bad but I am
2 saying that this particular merger and the merger of
3 GTE/Bell Atlantic will harm consumers.

4 These marriages of monopolies would, one,
5 eliminate substantial actual and potential competition,
6 particularly in the St. Louis market where Ameritech had
7 concrete plans to enter. Two, it would decrease the number
8 and comparability of benchmark firms, which thus increases
9 the regulatory and anti-trust challenges. Three, it would
10 decrease rivalry and innovation.

11 Moreover and most significantly, the aggregation
12 of local monopoly markets, the bigger footprint as noted
13 economists have called it, would give SBC and Ameritech an
14 increased ability and incentive to discriminate unfairly
15 against rivals.

16 Just as the former Bell system leveraged its
17 monopoly power to distort competition in other markets, a
18 combined SBC and Ameritech would predictably impede
19 competition in local markets, long distance markets, and
20 markets for new innovative services.

21 This country has spent many years and many
22 billions of dollars to breakup telecom monopolies and to
23 have competition, we simply cannot afford to go back to the
24 days of "Ma Bell" where prices were high and consumer
25 choices were virtually non-existent.

1 These serious problems are not offset in any way
2 by the claimed benefits of the merger. The claim benefit is
3 that the merged companies would plan to enter 30 local
4 markets outside their monopoly territories. This plan has
5 to be viewed with skepticism. First, there are no firm
6 commitments but even if there were commitments it would be
7 dubious because these companies today can engage in out of
8 region competition, they just choose not to do so.

9 Their original attempts to tie the 30 city market
10 plan to the merger did not hold up well under scrutiny so in
11 the reply comments last months SBC and Ameritech now
12 explained that the real reason that they can't each go it
13 alone is that they are afraid their investors would not be
14 happy with the resulting earnings dilution.

15 But, I've got to say, if a massive company like
16 SBC and Ameritech, with each having vast local telephony
17 experience and resources, all the technology, if they cannot
18 profitably compete in local telephone service regulators
19 need to redouble their efforts to eliminate barriers to
20 local competition. The answer is not to allow this merger
21 to go forward.

22 This merger, along with the Bell atlantic/GTE
23 merger implicates nothing less than the future structure of
24 this critical industry and its ability to perform
25 efficiently. If the FCC does not exercise its authority now

1 to ensure an efficient market structure surely we will all
2 pay the price in the future.

3 The Telecom Act of 1996 was supposed to open up
4 local telephone monopolies. What we got instead was
5 stonewalling, incessant legal challenges, and greater
6 concentration. The mergers of large regional monopolies can
7 only take us further away from the goal of local
8 competition, thus, these merger applications should be
9 denied. Thank you.

10 CHAIRMAN KENNARD: Thank you. Mr. Carter.

11 Agenda Item: Stephen M. Carter, President -
12 Strategic Markets, SBC Operations, Inc.

13 MR. CARTER: Thank you, Commissioners. My name is
14 Stephen Carter and I'm the President of Strategic Markets
15 for SBC. I've been made responsible for taking the combined
16 SBC/Ameritech into the nation's biggest 30 markets out of
17 our region. Together, with the 20 markets the 2 companies
18 would already serve on a combined basis, the national local
19 strategy will make us a national competitor and establish
20 our position as a global provider.

21 I'd like to begin by acknowledging that the merger
22 has or soon will meet two key tests. First, I don't think
23 there is any question today that SBC is fully qualified with
24 respect to the necessary financial, technical, and
25 managerial expertise and requisite character to obtain the

1 Commission's approval of this transaction. In addition, the
2 Department of Justice is conducting an extremely thorough
3 review of this merger for any anti-competitive's concerns.
4 We are confident that we will receive the Department's
5 approval.

6 That said, I would like to spend a few minutes
7 explaining why we believe this merger is in the public
8 interest and will be good for consumers nationwide, good for
9 employees of both companies, good for our shareowners, and
10 good for America's place in the global telecommunications
11 arena.

12 This merger is our effort to shorten the distance
13 to the future for our current customers and consumers in
14 markets from coast-to-coast. This merger is about enhanced
15 economic growth, improved customer service and increased
16 competition around the corner and around the world.

17 there are some who pace the perimeter of the
18 status quo, nervously guarding the way things are. Change
19 is their enemy. We believe the time for change has arrived,
20 and with this merger we have put our resources behind our
21 commitment to the future.

22 Once this merger is complete, we will jump start
23 national competition through our National Local strategy for
24 business and residential customers liken thing else has
25 since the passage of the Telecommunications Act of 1996. We

1 will become a new telecommunications alternative for another
2 70 million people. In the process, we will bring new
3 products and services to consumers in and out of region
4 faster and more efficiently. And, our entry in those
5 markets will force a competitive response from incumbent
6 phone companies, long distance giants and others.

7 I can't overstate this point: We're not pursuing
8 National Local in order to win regulatory approval for the
9 merger. It's exactly the opposite. the merger with
10 Ameritech is a means to achieving the goals of the National
11 Local strategy. It's a decision that both companies made
12 based on our mutual desire to take advantage of growth
13 opportunities in a dynamic telecommunications marketplace.

14 The SBC/Ameritech merger is all about growth. For
15 example, we will need 8,000 plus employees to serve
16 customers in these new markets, which is just one reason why
17 the Communications Workers of America support us.

18 Others have speculated about what this merger will
19 do. I'd rather talk about real results. In the 18 months
20 since our merger with Pacific Telesis, the situation in
21 California is much improved. Ms. Costa could not be more
22 wrong. The full facts show that in the competitive arena
23 when we took over there were almost 20,000 orders backlogged
24 from our competitive customers. There have been no back
25 orders since the middle of last year, there are none now.

1 Service and repair times are better. We are
2 introducing products and services, including the nation's
3 biggest roll out of high-speed Internet access through DSL.
4 Our prices are regulated. DA is below cost. Don't ask
5 about what DA is being charged in other areas, ask about
6 what our competitors charge for DA in California. The truth
7 is that we are too low. We are below cost.

8 Our charitable contributions and community giving
9 have more than doubled. We have created more than twice the
10 number of new jobs that we anticipated. We fully expect
11 that the Ameritech merger will allow us to achieve similar
12 results.

13 If the Commission has any doubts on this matter, I
14 would encourage you to consult with the Commission in
15 California to obtain the full facts, and not to listen to
16 any ill-informed or heavily biased advocacy groups.

17 We know this Commission wants to promote
18 competition and so do we. Our merger is a product of
19 competition -- competition for our most profitable customers
20 requires us to become a national and global carrier, which
21 will allow us to then compete for business and residential
22 customers nationwide. If you have any doubts, just look at
23 how much the competition is doing to stop this merger.

24 The race is on among SBC, Ameritech, AT&T/TCI,
25 MCI/WorldCom, Bell Atlantic-NYNEX-GTE and others --

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1 CHAIRMAN KENNARD: Mr. Carter, you will have to
2 wrap up, please.

3 MR. CARTER: -- to achieve the size, scale,
4 customer base, and employee talent to become a national
5 provider. In the end the consumers will win. I hope you
6 will give them the opportunity to choose and give us the
7 privilege of competing for them. Thank you.

8 Agenda Item: Questions and Answers.

9 CHAIRMAN KENNARD: Thank you, Mr. Carter. Mr.
10 Carter, you made a statement in your presentation about your
11 confidence that the Commission will find that your company
12 has the requisite character to get approval for this merger.
13 Character, of course, is a term of art in FCC parlance
14 because the FCC must find, as a matter of law, that anyone
15 who comes before us and asks for the approval of a license
16 transfer be deemed to have the requisite character.

17 Historically, the FCC in making this evaluation
18 has looked to see whether the applicant has complied with
19 all significant FCC rules and regulations. Now, I know that
20 your company has a dispute with this Commission about the
21 way that we have implemented the 1996 Act and, in fact, so
22 much so that you have now gone to the United States Supreme
23 Court and asked that the highest court in the land rule
24 unconstitutional certain key provisions of the Act, Section
25 271.

1 Now, putting that aside, because everyone has
2 their opportunity for full legal redress in the courts, I
3 want to ask you this question about compliance with the law
4 and then I want to ask the other panelist to address it.
5 Can you tell us today that SBC has complied with the rules
6 and regulations of this commission implementing the market
7 opening provisions of the 1996 Act, in particular, Sections
8 251 and 252, which I believe are the heart and soul of the
9 act because they require that the incumbent local exchange
10 carriers open up their markets for competition? Can you
11 address that question for me, please?

12 MR. CARTER: I can say unequivocally that I
13 believe our company has done as much or more than any other
14 to open up our markets. We have, on record, more than
15 2 million access lines have now moved over to be served by
16 other companies. We have established OSS systems that I
17 believe most people believe are the best in the industry.

18 We've got no backlog of orders from CLEC
19 customers. Although, we have reserved our right to appeal
20 certain issues we have never not -- we have never taken the
21 position that we wouldn't enact orders until the appeal was
22 finished and finalized. So, I can't think of any issue at
23 the moment where we are out of step. We are in disagreement
24 but not out of line with your orders or, indeed, any state
25 orders.

1 The ISDN issue that was mentioned earlier, I will
2 admit, that we had an error. We file a lot of responses and
3 in California we did respond to the ISDN request,
4 regrettably the response was not complete. We admitted it
5 wasn't complete and, indeed, have said that we would
6 complete it. It was not that we were not interested or
7 didn't do it on time but it was incomplete, we made a
8 mistake. Frankly, I'm amazed that we do as many on time and
9 as soon completely as we do. As you can imagine there are a
10 lot of orders.

11 CHAIRMAN KENNARD: Thank you, Mr. Carter. Would
12 Mr. Devlin or Mr. Taylor like to address that question?

13 MR. DEVLIN: Yes, I would, Mr. Chairman. Thank
14 you very much. I took a note down on my pad when Mr. Carter
15 said, "The time for change has arrived."

16 In the notes that I made were, "Does this mean the
17 baseless lawsuits will be dropped? Does that mean SBC will
18 stop fighting in region competition?" Mr. Carter talks
19 about his company's compliance with the Commission's market
20 opening rules, yet I believe it is now five states in SBC
21 territory that have denied or states or Commission staff's
22 that have recommended denial of 271 application in SBC's
23 territory for multiple failures to implement the checklist.

24 MR. TAYLOR: And I'd like to comment. Focal
25 Communications is both a customer of Pacific Bell,

1 Ameritech, and Bell Atlantic. Looking at those three
2 incumbents to date there is a big difference between the
3 best and the worst and I'm not going to say that the best is
4 complying with the letter of the law but I would not put
5 PacBell's cooperation with competitive telephone companies
6 anywhere close to the best. As a customer, most of our
7 orders have been late.

8 CHAIRMAN KENNARD: Thank you. Other questions
9 from the bench?

10 COMMISSIONER NESS: Mr. Carter, you indicate that
11 if this merger is approved that you would go into 30 markets
12 around the country. Is there a reason why you would not
13 pursue the same strategy if the merger were not approved?

14 MR. CARTER: I think we've put on record our
15 reasons why we believe we have to be a national and a global
16 provider and to do that we have to service more than just
17 one or two markets outside of our region. The Ameritech
18 merger brings, of course, certain cities within our region
19 and thus reduces the burden of building outside of the
20 region. It is our belief that to do a build out in the
21 proper way, to give full facility based competition, we need
22 the scale and scope, the talent pool that Ameritech gives
23 us.

24 COMMISSIONER NESS: The inference, however, is
25 that other major local operating companies would also then

1 compete in your region, your expanded region, and there
2 would be more competition, more fierce competition than
3 exists today. Indeed, that is the concept behind the public
4 interest offering that you are making.

5 What would make one conclude that that competition
6 would exist in your region if you are telling us that it
7 would be extremely difficult for you to compete outside your
8 region but for a much more expanded geographic area?

9 MR. CARTER: Well, I can't say how our future
10 competitors would give themselves up to do the competing.
11 They may do it alone, they may do it with others in
12 partnership or alliances but I am certain that by attacking
13 the very heart of their economic base they would have to
14 find ways to spread their overhead load and to compete back
15 in our region would seem sensible. They may not have
16 ambitions to be one of the national competitors. They may
17 believe that they can survive as a more localized entity.

18 Certainly, the AT&Ts and MCIs and Sprints of this
19 world are fully capable of competing around the country
20 today. Those people, I believe, will be prompted to more
21 aggressively pursue competition in our own territories when
22 we are attacking their own bases. In fact, it is, I think,
23 apparent that Sprint's interest in this merger has sharpened
24 considerably since we announced that we would be planning
25 certain of their key markets where they are the local

1 player.

2 COMMISSIONER NESS: Would Mr. Devlin or Mr. Taylor
3 like to respond to that?

4 MR. DEVLIN: Yes. Thank you, Commissioner Ness.
5 I think, first of all, we need to establish why Sprint is
6 here today. We are not here as a competitor of SBC, we are
7 here as a customer of SBC. We are one of SBC's largest
8 customers. We are a captive customer. If we want to
9 complete long distance calls in the South area of the United
10 States we must use SBC.

11 There are competitive alternatives that are
12 starting but I think everyone would agree that virtually 98
13 percent plus of calls use the incumbent local telephone
14 company. We would love alternatives to SBC, we want to see
15 local competition because that will drive our largest single
16 cost down, which is the cost of access. So, we are here not
17 as a competitor but as a customer.

18 Addressing the specific question, this notion that
19 you have to be a mega-corporation to compete or that you
20 need a large captive customer base to compete, just a few
21 thoughts for you. We have heard already from Mr. Taylor
22 about how CLEC's are doing at a fraction of the size but
23 think back in the old days, the long distance days. Sprint
24 was the first one to construct a high capacity fiber optic
25 digital network. We didn't have a single customer, yes it

1 cost billions of dollars, yes for the short term our
2 shareholders got nervous but we did it and we are doing it
3 again now without a single wireless customer when we
4 started. We bid and we paid the government over
5 \$2.5 billion for the right to build a national fiber system.

6 We are a smaller company than SBC. If you are
7 going to succeed in the marketplace you need to take risks,
8 you need to make investments, and if SBC believes that it
9 needs to be global it should be opening up its local markets
10 so it can get into the long distance business and it should
11 be competing right now. It shouldn't be waiting for a
12 merger, it is large enough to compete.

13 MR. TAYLOR: Just a quick comment. It appears
14 that the logic just doesn't seem to make sense. If the
15 merger, as Mr. Carter explains, is the means to achieve the
16 strategy, and he also indicated that the company will sort
17 of pass the benchmark test of qualifications on the
18 managerial, technical, and financial side, how come every
19 other competitive entity who has chosen to do this has done
20 it with far fewer people, far less money, and far faster and
21 in more markets than the combined SBC/Ameritech indicates
22 they will? It doesn't seem to make sense from a common
23 sense perspective.

24 CHAIRMAN KENNARD: Go ahead, Commissioner Powell.

25 COMMISSIONER POWELL: Mr. Carter, I want to get

1 something clear, because people are debating the same thing,
2 perhaps with different terms. Is your statement that it is
3 impossible to do or it is just plain harder to do?

4 MR. CARTER: It is a lot harder to do but not
5 impossible to do. It depends on the criteria that your
6 business sets as its goals. I believe if you want to be a
7 niche player, a CLEC that picks off the ripe business
8 customers, the people that are paying the higher rates of
9 service, if you want to ignore the residential customer, if
10 you don't want to serve a broad base of consumers across a
11 wide range of markets then surely you can enter almost any
12 city you want to pick off that kind of business.

13 But, we believe that if you are to enter a market
14 with a full fledged wide product range, innovative services,
15 your own product range that consumers demand, we believe you
16 have to have the scale that we are talking about. We
17 believe it is only with that kind of scale that you will get
18 sort of competition that was envisaged by the Act.

19 COMMISSIONER POWELL: I want to come back to that
20 in a second but, Mr. Taylor, one of the things I also want
21 to try get straight in my mind, and maybe it is a question
22 of both of you, if someone is talking about a national local
23 strategy -- and I understand they are talking about 30
24 markets and that might be a qualifier -- is it an
25 appropriate analog to look at the aggregation of CLEC

1 experiences at significantly smaller scales or is the
2 analog, the ones that come to my mind, the large IXCs that
3 are pursuing a more comparable national local strategy, that
4 is an attempt to enter the United States in a single
5 significant way at the local level, as opposed to companies
6 such as yourself who may be in 13 states at the moment or so
7 many regions at the moment.

8 I just wanted to get your comment on the notion of
9 national strategies, not really the community of CLECs, like
10 yourself, the smaller midsize CLECs, but, indeed, the
11 similarly situated global carriers like AT&T and
12 MCI/WorldCom and how they are faring with respect to
13 national local strategy.

14 MR. TAYLOR: Well, I think, the short answer to
15 your question is the AT&Ts in the local telephone area
16 aren't faring any better or worse than the Focal
17 Communications. We're certainly able to compete head-to-
18 head with the large global carriers, as well as we are with
19 the incumbents. Size does not appear to be a criteria that
20 favors or hinders. It may hinder more.

21 COMMISSIONER POWELL: I guess what I am exploring,
22 and maybe I'm off base, but would you concede that there may
23 be a difference in difficulty between whether you are
24 pursuing a national local strategy than it would be to
25 pursue on the sort of more market-by-market or discreet

1 market basis? Are there things that an AT&T or an
2 MCI/WorldCom would insist on or need that are consistent
3 with a national strategy that would not necessarily be
4 concomitant with interests of companies like your own?

5 MR. TAYLOR: No, there is nothing that would be
6 different between the two. Focal Communications serves
7 residential customers, we serve the largest corporations.
8 We believe we have a national local strategy as well. We
9 wouldn't phrase it that way but we are coast-to-coast and
10 north to south and we don't see how whether you are a
11 regional player or a national player that is doing local
12 telecommunications how the national local strategy gives you
13 any advantage or differentiates you from anybody else.
14 Local phone service is still local, like politics.

15 COMMISSIONER POWELL: The last thing I wanted to
16 ask, going back to Mr. Carter, and I think I have asked you
17 this question before -- I'm still somewhat at a loss at the
18 suggestion that the global competitive marketplace is
19 demanding a local presence in each and every city to be
20 competitive with the customers that you describe.

21 It seems to me, in the absence of the ability to
22 connect those cities across lattice or internationally you
23 have nothing, that is other than 30 local presence that you
24 -- then you can't go to customers with and make any greater
25 representations about your service abilities than you could

1 now because you really don't have the interlateral relief
2 that is going to be essential.

3 Would you say a little bit about essentiality of
4 being able to connect those local entries that you purport
5 to make on the importance of the interlateral relief as a
6 component of that? Because someone might say your merger
7 might make sense but not now.

8 MR. CARTER: There is no doubt that without the
9 benefit of interlateral relief our national strategy is
10 stranded. However, perhaps the fact that we have been
11 rejected in part in a number of our states shows that we
12 have been early to the party in trying to fulfill a somewhat
13 murky checklist. We thought we had finished, it is apparent
14 that others think we haven't but we are working very closely
15 with our states to try and work out what it is that is
16 required to obtain 271 relief.

17 Certainly in the time scale that we are talking
18 about for the completion of the merger and the launch of
19 national local we would anticipate that we have long
20 distance relief. If we haven't, some four years or so after
21 the Act, then something has gone dreadfully wrong.

22 So, we do believe that is a part of the strategy
23 but we see those as being two separate tracks that we have
24 to take on. It gives us an added incentive, perhaps, to
25 work just a little harder to make sure that we do comply and

1 fulfill 271 appropriately.

2 COMMISSIONER POWELL: Just to understand, is your
3 suggestion that in the combined number of states that would
4 be represented by SBC/Ameritech you would anticipate long
5 distance approval in everyone of them over the course of the
6 next year?

7 MR. CARTER: We would certainly hope that once we
8 have achieved one of the states it would give us a very good
9 guideline as to how to achieve all of them. I can't speak
10 to Ameritech's systems at all, I'm afraid, but certainly as
11 far as SBC is concerned I would expect that once we have the
12 blue print for the one we would be able to achieve an
13 approval for all of them.

14 CHAIRMAN KENNARD: Commissioner Furchtgott-Roth.

15 COMMISSIONER FURCHTGOTT-ROTH: Thank you, Mr.
16 Chairman. Mr. Carter, I have two questions for you. The
17 first is, is the information that you have been asked to
18 provide to the Department of Justice substantially different
19 from the information that you have been asked to provide to
20 the FCC?

21 Second, of the 14,000 or so licenses that were
22 transferred under Section 310 last year the vast majority
23 were handled in a fairly simple ministerial way without a
24 lot of fanfare. Before SBC contemplated a merger with
25 either PacBell, a couple years ago, or now Ameritech, did

1 you have in your possession or did anyone suggest to you
2 there might be some document that would describe how certain
3 license transfers would be handled in a certain way with a
4 fairly ministerial process and how certain other license
5 transfers would be subject to intense scrutiny? Was there
6 ever in your possession a clear road map of precisely how
7 this Commission would handle your merger and the license
8 transfers involved, as opposed to other license transfers?

9 MR. CARTER: I am not one of the experts that
10 submit all of the information but my impression is that
11 substantially the sort of information that we have supplied
12 to the Department is very similar to that that we are
13 supplying to the Commission. Indeed, from the sort of
14 questions we are receiving it may even be that the
15 Commission is more interested in our detailed business plans
16 than the Department but we will see how that plays out.

17 Certainly, before the Pacific merger I don't think
18 any of us in SBC management talked about knowing what the
19 blue print was. We had a very clear idea about what the DOJ
20 would be wanting. I think since the Pacific merger we're,
21 in contemplating this merger, I don't believe we had any
22 firm idea about what would be required from the Commission.
23 Again, we do have a fairly clear idea about what the DOJ
24 will be using as their standard.

25 CHAIRMAN KENNARD: Commissioner Tristani.

1 COMMISSIONER TRISTANI: Mr. Chairman, thank you.

2 I have two questions for Mr. Devlin and Mr. Taylor.

3 The first one is -- well, you've been speaking
4 from the competitor's point of view but I know you also want
5 to gain and serve new customers but I'd like you to tell me
6 whether you think the FCC should be looking at these
7 allegations of deteriorating service quality in California.
8 That is one question.

9 A broader question is if we say "yea" to these
10 mergers, which is something you oppose, are there any
11 meaningful conditions that the FCC should and can apply?

12 MR. DEVLIN: Commissioner Tristani, I think the
13 two questions are very much related and it is, "Can this
14 Commission rely on promises and conditions and get
15 comfortable that this merger is going to serve the public
16 interest?" I think the answer to that is clearly "no."

17 If we look at the mergers that have taken place,
18 the commitments that were made there or the statements of
19 intent that were made and the conditions that weren't
20 satisfied, the road is littered. But, let's even assume
21 that the conditions can be faithfully executed. I still
22 don't think it fixes the problem.

23 Let's take an example. Someone is hitting you
24 over the head with a hammer, you call the police, the police
25 send their crack negotiator team and they negotiate

1 conditions. The conditions are the guy can keep hitting you
2 over the head with the hammer but he must give you an
3 aspirin every four hours. Let's assume the guy actually
4 faithfully executes that and gives you the aspirin every
5 four hours, you still haven't fixed the problem and that is
6 the problem with conditions here.

7 What we are talking about is the two most likely
8 competitors agreeing not to compete against each other,
9 merging into one big happy family and once that is done you
10 can never unwind it. Those competitors are lost forever and
11 consumers that were relying on innovation and lower prices
12 and long distance companies that hoped to have lower access
13 prices all that is gone forever. So, we don't think
14 conditions work.

15 MR. TAYLOR: In response to your question of
16 should you be looking at what is happening in California,
17 absolutely. Because it sets a pattern of believe ability in
18 what they are going to tell you they will do. Clearly, I
19 think, everybody has said and there have been a number of
20 opinions about what has happened in California. You guys
21 have the information to determine what you believe has
22 happened in California as well.

23 We think it is important because what they have
24 done in California will likely be what they do in other
25 areas. It appears, as a CLEC in California, that we have

1 not seen better service by the merger of SBC and PacBell, we
2 have seen worse service there. So, in our narrow view as a
3 proponent of more competition and bringing service to
4 residential and business customers it has been more
5 difficult for us since the merger.

6 What conditions should you apply? The conditions
7 should have, in Mr. Devlin's analogy, a really big stick so
8 that you have the hammer in your hand and you are hitting
9 the opponent on the top of the head so that when they don't
10 comply, because we don't believe they will, that you have
11 the means to force them and force them painfully into
12 compliance. I think that is the one clear message, if we
13 could send is, should you approve this and we don't think
14 that is in the best interest, you need to ensure that your
15 stick will cause a headache bigger than one aspirin.

16 COMMISSIONER TRISTANI: Mr. Carter, do you want to
17 respond to any of that?

18 MR. CARTER: Thank you very much. I would
19 heartily agree that you look at California because I think
20 it will be a model of what you actually want in terms of
21 promises kept. I would point out that Focal Communications
22 was not trading with Pacific Bell pre-merger so Mr. Taylor
23 has no experience pre-SBC, indeed, we have only been trading
24 at a very limited way in the latter part of this year. To
25 my knowledge, as perhaps you know I was in charge of

1 wholesale before, but I have had no complaints in that
2 capacity from that company.

3 I think, also, on the service side, Sprint awarded
4 SBC no less than 26 awards for service, including "Best in
5 Class" in 1998, 24 individual awards for provisioning,
6 network maintenance, installation, and have declared us a
7 model of what they call their "B Man" strategy, which I
8 understand helps their eye on product.

9 The other thing I would say, again, we've created
10 more than 2,200 jobs, we promised a thousand. We committed
11 to improve service, we have. The Silicon Valley had
12 terrible troubles before we took over. We also had the
13 strange effects of El Nino this year, despite that service
14 in the Silicon Valley is still 80 percent better than it was
15 before. I will agree we still have some room to go but we
16 are making huge improvements in that area and overall
17 service in the state is much improved.

18 Basic service prices have not changed. As I have
19 said before, they are regulated, they have not changed.
20 Competition has been promoted. We have no backlogs. We
21 have committed to giving more to communities, invested more
22 in facilities, we've expanded products and services and I
23 think ADSL is a preferred product over ISDN. We are going
24 to roll that out in a very large way.

25 I would encourage that you look at California

1 extremely carefully.

2 CHAIRMAN KENNARD: If I could just have a couple
3 of follow-up questions to some of your earlier testimony,
4 Mr. Carter. If I could take the liberty of paraphrasing
5 what I think you said, which is that if you were to be able
6 to do this merger you would have a greater incentive to get
7 interlateral relief so that you can make the synergies of
8 the merger even more powerful. Is that right?

9 MR. CARTER: Well, I think I was responding to
10 Commissioner Powell's questions --

11 CHAIRMAN KENNARD: You were.

12 MR. CARTER: -- about the national strategy.
13 Perhaps you could imply by that the merger but in terms of
14 the national strategy I think certainly that requires
15 interlateral relief to work.

16 CHAIRMAN KENNARD: Okay, well, let me just pose
17 the following question then to Mr. Devlin and Mr. Taylor.
18 If it is true that the national strategy is more attractive
19 to a combined SBC/Ameritech because they can get
20 interlateral relief do you think that increased incentive
21 gives you any sense of hope that these markets within the
22 SBC/Ameritech region will be opened up faster if this merger
23 goes through?

24 MR. TAYLOR: No, it doesn't. What would give me
25 comfort is if it happened the other way around, if the

1 merger could not go through until they received interlateral
2 relief, thereby having opened up the markets. In that case
3 we are very comfortable with this process going forward. We
4 are very comfortable and support companies like SBC getting
5 interlateral relief but they first need to follow the rules
6 that you all have laid out. We will believe that that will
7 make a great hurdle for them to get the merger approved, get
8 interlateral relief, comply by the rules outlined by you all
9 and we would support that kind of merger.

10 CHAIRMAN KENNARD: Mr. Devlin.

11 MR. DEVLIN: Mr. Chairman, Mr. Carter discussed
12 earlier in this context that perhaps SBC was early to the
13 party. I think the implication there was maybe SBC was in
14 some way innovative in getting to the state commissions
15 first. I think what we saw, however, was SBC's attempt to
16 get 271 authority without doing any meaningful upgrades.

17 If SBC really believes that the world is going to
18 one-stop shopping its number one priority should be opening
19 up its local markets so it can offer long distance in its
20 local markets. The incentive is so strong already to let
21 the merger go through, which will distort competition I
22 think would be a very big mistake and will not lead us to
23 local competition at all.

24 CHAIRMAN KENNARD: Thank you. I had a follow-up
25 question to Mr. Carter's comments in response to

1 Commissioner Furchtgott-Roth about the filing procedure here
2 at the FCC. Now, you filed a Hartscott Redino filing at
3 Department of Justice, didn't you?

4 MR. CARTER: I presume so but I can't claim that
5 that's an area that I'm involved in.

6 CHAIRMAN KENNARD: But you are aware that the
7 Department of Justice would require a Hartscott Redino
8 filing in connection with a merger of this size, isn't that
9 right?

10 MR. CARTER: Yes, speaking as an operations guy I
11 am aware of that.

12 CHAIRMAN KENNARD: Okay. And the FCC doesn't
13 require a Hartscott Redino filing, do we?

14 MR. CARTER: I believe you only need to do one.

15 CHAIRMAN KENNARD: That's right. And it is only
16 with the Department of Justice. Now, in the information
17 that I have here it indicates that a combined SBC Ameritech
18 company would serve approximately 55.5 million lines,
19 representing approximately 40 percent of the nation's total
20 access lines. Does that seem right to you, Mr. Carter?

21 MR. CARTER: I heard the number earlier that said
22 it was thirty some percent but...

23 CHAIRMAN KENNARD: Okay, let's stipulate it's over
24 30 percent of the country.

25 MR. CARTER: It's a lot of lines.